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KING COUNTY  
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Trial Date: January 23, 2019  
FILED

CASE NUMBER: 16-2-31049-4 SEA

**CERTIFIED  
COPY**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

HENRY SOTO and SARA SOTO, husband  
and wife and the marital community  
composed thereof, SARA SOTO, as  
guardian for her minor child CALUM  
SOTO, GREG BLAUERT and SUSAN  
BLAUERT, husband and wife and the  
marital community composed thereof,

Plaintiffs,

v.

MICROSOFT CORPORATION, a domestic  
corporation,

Defendant.

No. 16-2-31049-4 SEA

DECLARATION OF REBECCA J. ROE  
IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL

I, Rebecca J. Roe am one of the attorneys representing plaintiffs in this matter. I  
make this declaration based upon personal knowledge. I am over the age of 18 and  
competent to testify to the matters set forth herein.

1. Attached hereto as Exhibit 1 are true and correct copies of excerpts of the  
deposition of Suzanne Kinzer taken June 1, 2018.

2. Attached hereto as Exhibit 2 is a true and correct copy of a 5-page report prepared

DECLARATION OF REBECCA J. ROE  
IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL- 1  
663638.docx

SCHROETER, GOLDMARK & BENDER  
810 Third Avenue • Suite 500 • Seattle, WA 98104  
Phone (206) 622-8000 • Fax (206) 682-2305

EXHIBIT AD

1 by Robert Sizemore.

2 3. Attached hereto as Exhibit 3 are true and correct copies of excerpts of the CR  
3 30(b)(6) deposition of Robert Sizemore taken June 1, 2018.  
4

5 I declare under penalty of perjury under the laws of the State of Washington that the  
6 foregoing is true and correct.

7 DATED at Seattle, Washington, this 27<sup>th</sup> day of July, 2018.  
8

9 SCHROETER, GOLDMARK & BENDER

10   
11 REBECCA J. ROE, WSBA #7560  
12 Counsel for Plaintiffs  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
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26

DECLARATION OF REBECCA J. ROE  
IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL- 2  
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EXHIBIT AD

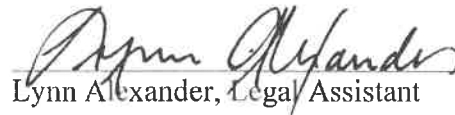
**CERTIFICATE OF SERVICE**

I certify that I caused to be served in the manner noted below a copy of the foregoing pleading on the following individual(s):

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DATED: July 24, 2018, at Seattle, Washington.

  
Lynn Alexander, Legal Assistant

## **Exhibit 1**

EXHIBIT AD

Page 1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

HENRY SOTO, et ux., SARA )  
SOTO, as guardian for her )  
minor child CALUM SOTO, )  
GREG BLAUERT et ux., )  
)  
Plaintiffs, ) No. 16-2-31049-4 SEA  
)  
vs. )  
)  
MICROSOFT CORPORATION, )  
)  
Defendant. )

30(b)(6) DEPOSITION UPON ORAL EXAMINATION OF  
MICROSOFT CORPORATION  
SUZANNE KINZER

Taken at Schroeter Goldmark & Bender

810 Third Avenue | Suite 500

Seattle, Washington

DATE TAKEN: June 1, 2018  
REPORTED BY: Mary A. Whitney, CCR - WCRL #2728

Page 3

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-o0o-

Page 2

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(Cont'd)

Page 4

30(b)(6) DEPOSITION OF MICROSOFT CORPORATION  
SUZANNE KINZER

EXAMINATION INDEX

| EXAMINATION BY  | PAGE |
|-----------------|------|
| Ms. Roe .....   | 6    |
| Mr. Wells ..... | 112  |

EXHIBIT INDEX

| EXHIBITS FOR IDENTIFICATION     | PAGE |
|---------------------------------|------|
| No. 171 - CPSS Wellness Program | 103  |

CONFIDENTIAL DESIGNATIONS

(Cont'd)

Page 9

1 A. Uh-huh.  
 2 Q. And what are the organizations that many  
 3 HR professionals belong to?  
 4 A. Yeah --  
 5 MS. FRANCIS: Object to the form.  
 6 Go ahead.  
 7 A. It would be SHRM, professional human resource  
 8 -- I went through all the coursework for that -- but  
 9 I'm not an active participant. I have been in the  
 10 past.  
 11 Q. Okay.  
 12 A. Uh-huh.  
 13 Q. And when did you quit being an active  
 14 participant?  
 15 A. Probably about five years ago.  
 16 Q. Any particular reason why you stopped being  
 17 an active participant?  
 18 A. No. It translates pretty closely to when  
 19 my job became global, and the amount of work, the  
 20 level of travel and that kind of thing, so --.  
 21 Q. Okay.  
 22 A. Yeah.  
 23 Q. Is there another group that is kind of  
 24 recognized in the HR professional world?  
 25 A. Not that I'm aware of that comes top of mind.

Page 10

1 Q. And not that you've ever belonged to?  
 2 A. No.  
 3 Q. So, describe the organizational structure of  
 4 Microsoft HR. And a lot of the time period involved  
 5 here is 2008 to 2014, so I don't know how it's easiest  
 6 for you to do that --  
 7 A. Yeah.  
 8 Q. -- but we're just trying to get a broad  
 9 stroke look at it.  
 10 A. Okay. So, probably the best way to describe  
 11 that would be to start at the top. Kathleen Hogan  
 12 would be our executive vice president of  
 13 human resources, and under Kathleen's umbrella would  
 14 be the buckets.  
 15 Three of the biggest buckets would be  
 16 staffing, so hiring and staffing is one entity. You  
 17 had human resources, meaning we call that "HR," under  
 18 "HR" -- right? -- so that would be more of the  
 19 generalist work, but it also includes talent and  
 20 organizational development and leadership work. And  
 21 that's the most client-facing organization.  
 22 Q. All right.  
 23 A. Then you would have comp and ben,  
 24 compensation and benefits, and we think about  
 25 that because we think about it as total rewards,

Page 11

1 so --.  
 2 Q. Okay.  
 3 A. Uh-huh.  
 4 Q. And let me have a little clearer definition  
 5 of the focus, if you will, of the three big buckets.  
 6 "Staffing," what is their mission, if you  
 7 will?  
 8 A. So they would be working on the broader  
 9 Microsoft workforce planning, meaning hiring, internal  
 10 and external movement across the company.  
 11 Q. And about how many people are currently  
 12 in the staffing bucket?  
 13 A. I don't know.  
 14 Q. Ballpark?  
 15 A. I don't know.  
 16 Q. All right.  
 17 And then let's talk about "entity."  
 18 Is that what you said is the second bucket? How did  
 19 you describe the second bucket?  
 20 A. No, the second bucket I said was  
 21 "human resources."  
 22 Q. And that's what we consider a human resources  
 23 generalist?  
 24 A. Part of it, right.  
 25 Q. Okay.

Page 12

1 A. There is a -- if you think of it by audience  
 2 in some way, you think about the managers and  
 3 employees who are supported by generalists, who are  
 4 coaching managers, performance management, policy.  
 5 Then you have leadership capability and  
 6 leadership team and leadership focus, and so that  
 7 includes succession planning, driving the talent  
 8 ROB -- rhythm of the business -- driving the people  
 9 priorities for the organization, so working closely  
 10 with the business on their people priorities.  
 11 Q. All right.  
 12 A. And at Microsoft it is -- we go through  
 13 various stages, and companies typically do, of where  
 14 that work sits, is it all with one team or do you  
 15 divide that work.  
 16 Because sometimes in the leadership bucket  
 17 you tend to get organizational development -- there's  
 18 a crossover there -- but that's all under human  
 19 resources.  
 20 Q. And what is the approximate number of HR  
 21 people in that bucket?  
 22 A. I think it's about 3,000.  
 23 Q. And are they all here?  
 24 A. Oh, no.  
 25 Q. Okay.

3 (Pages 9 to 12)

EXHIBIT AD

Page 45

1 A. We've changed it.

2 You know, I -- Denise was a very,  
3 fair leader, so I had come to CSS, and CSS is where --  
4 it's customer support, so they have a lot of empathy  
5 for people -- right? -- I had come from engineering,  
6 and so this is the most people-oriented business that  
7 you could support at Microsoft, in my opinion, and I'm  
8 still in services.

9 Denise cared deeply about her people,  
10 so that conversation was hard, hard in a sense that  
11 she didn't feel good about giving anybody no  
12 rewards -- right? -- and so -- so it being forced or  
13 feeling like there was guidance, even if it was  
14 recommended guidance, if there was an exception,  
15 we could have gotten an exception, right?

16 But it's hard. That's a hard conversation  
17 to have with your people -- right? -- and you know  
18 some of those messages are not going to land well.  
19 It's not an easy decision as a leader.

20 So the model that we have now, I love --  
21 I appreciate the fact that it's stuck, but I think as  
22 a business you're going to continually transform.  
23 I mean, we've learned -- right? -- around, you know,  
24 growth mindset and being more of a learning, agile  
25 company, and so our performance and rewards,

Page 47

1 Denise and I would look at it.

2 Q. But I'm talking about at that very first  
3 level --

4 A. Uh-huh.

5 Q. -- the first level or the calibration  
6 meetings, describe, please, the training that the  
7 managers are given about how they should factor in --  
8 I don't know what you would call it -- special  
9 circumstances or issues like that.

10 A. Yeah -- yeah. So they go through a training.  
11 At the time we used to deliver trainings as -- our  
12 scope was not as big, our client groups were smaller,  
13 and so we, as a team, a CSS HR team, we would  
14 deliver those trainings, so we would deliver rewards  
15 training prep sessions. So the managers would attend  
16 that.

17 Typically -- and I believe in the time  
18 when we delivered those -- that training for CSS,  
19 there's actually at the back of it scenarios that are  
20 built out. For example: Here's how you think about  
21 a new-hire. Here's how you think about someone on  
22 LOA. We have what we call college hires. We call  
23 them mocks.

24 Q. All right.

25 A. So -- yeah, so walk them through real

Page 46

1 you know, this should reflect that.

2 Q. And when did you change it?

3 A. We changed it at least three years ago.

4 Q. 2015ish?

5 A. Uh-huh.

6 Q. How do you account for issues -- you said  
7 like in the ranking that the manager -- or in the  
8 score --

9 A. Uh-huh.

10 Q. -- in the preliminary score, that the manager  
11 was supposed to consider issues, like if the person  
12 was a new-hire or if the person had been on an LOA,  
13 something like that.

14 Tell me how that worked, how that was  
15 supposed to work.

16 A. Uh-huh. So the manager would go through  
17 training in preparation for rewards, and so -- we have  
18 all managers go through a preparation training --  
19 so it's included in that training -- on how to manage  
20 various populations such as that. There's a few that  
21 we identify that we look at.

22 So the manager would be trained, and then  
23 if there's a lower in the organization calibration  
24 discussion, we don't sit in on -- as HR we don't sit  
25 in on all of those, but certainly at Denise's level

Page 48

1 life examples. Are they going to catch everything?

2 They may not. Right? It's -- you know, they're  
3 humans too. That's why we do scrubs at the upper  
4 level.

5 Q. What are scrubs?

6 A. I call them scrubs. It's basically looking  
7 at the review model, the rewards model, and that's  
8 what I was saying with Denise, right?

9 So in that meeting you can very easily  
10 pivot by those who were just hired in January,  
11 you know, and they only have three months of reward  
12 time to -- you know, six months for rewards.

13 That's what I call a scrub, just scrubbing  
14 the data -- looking through to make sure just from  
15 a -- I didn't know the people, but I can certainly see  
16 a name and I can see a hire date -- right? -- and say,  
17 Wow, person got a 5 -- right? -- and that's probably  
18 not right, so I could question and have the business  
19 revisit that.

20 Q. Okay.

21 A. Uh-huh.

22 Q. How would know if somebody had been on some  
23 kind of a -- perhaps a reduced schedule for specific  
24 reasons, how would you know that --

25 A. So --

Page 49

1 Q. -- or would you?  
 2 A. I would only know if they were part-time.  
 3 If it was in the system that they were part-time,  
 4 leave of absence is a list we always look at, that  
 5 it's pulled for us, so --.  
 6 Q. But if there were other sorts of special  
 7 circumstances affecting, you know, for instance,  
 8 the quantity of work, those issues you wouldn't know?  
 9 A. No.  
 10 Q. But you would expect the manager to know  
 11 those things and factor those things --  
 12 A. Yes.  
 13 Q. -- into their ranking, wouldn't you?  
 14 A. Yes.  
 15 Q. This CSS HR training, is there a deck that  
 16 goes with that?  
 17 A. Every year at the company level we have  
 18 a rewards deck that's prepared for managers, so we  
 19 just take that -- if there's anything specific for our  
 20 business we might add that in, but its contents is  
 21 given to us from what we call the center, and  
 22 so we don't create that ourselves, but it's  
 23 Microsoft-approved content that we would use.  
 24 Q. And would you have that document from 2013?  
 25 A. I have -- I do. I have a deck.

Page 50

1 Q. Perfect.  
 2 And then do you actually sit down in a  
 3 meeting with the managers and present the deck --  
 4 a deck's a PowerPoint, isn't it?  
 5 A. It's a PowerPoint.  
 6 Q. All right. Do you sit down and go through it  
 7 with them and have a discussion about it?  
 8 A. They are virtual, so -- we don't have  
 9 everyone in Redmond, and so most of our trainings are  
 10 virtual. The deck I have is not the actual training.  
 11 I have a deck from a calibration meeting that they  
 12 would use.  
 13 Q. Ah. Okay.  
 14 A. Uh-huh.  
 15 Q. Can you tell us where there might be a 2013  
 16 deck from a training?  
 17 MS. FRANCIS: Object to the form.  
 18 A. I might -- somebody might have it. I don't  
 19 know.  
 20 Q. I assume HR has a repository of decks, decks  
 21 and docs?  
 22 A. Not with us individually. You know, with HR,  
 23 I don't have decks that far back, so -- we get new  
 24 laptops and -- you know, so --.  
 25 Q. Okay.

Page 51

1 A. Yeah.  
 2 Q. So, let me ask you --  
 3 MS. ROE: You're looking at your watch.  
 4 Do you want to take a little break?  
 5 MS. FRANCIS: I just want to run to the  
 6 restroom real quick.  
 7 MS. ROE: Okay.  
 8 MS. FRANCIS: Is that okay?  
 9 MS. ROE: Sure.  
 10 (Brief recess taken.)  
 11 Q. (By Ms. Roe) Ms. Kinzer --  
 12 A. Yes.  
 13 Q. -- this document, if you would turn to  
 14 page 4 -- and I think it's Exhibit-151 -- this is the  
 15 subpoena that we sent to Microsoft, and they indicated  
 16 to us that you were going to speak to the points  
 17 raised in 6, in topic No. 6 --  
 18 A. Uh-huh.  
 19 Q. -- and the following subsets, and I can't  
 20 read upside-down.  
 21 So I guess my question is this.  
 22 Is that what you understood and is that what you  
 23 prepared for?  
 24 A. I'd have to look at each of these to say yes,  
 25 but -- I assume so, but I don't know.

Page 52

1 Q. Okay.  
 2 A. Okay.  
 3 Q. Let's go back and talk for a moment about the  
 4 things that you did review. Give us a description of  
 5 what kinds of documents you reviewed.  
 6 A. So, the summary plan of benefits back from  
 7 2013, in case there were any changes, an overview, and  
 8 a number of emails with Greg and some with Henry.  
 9 Q. All right.  
 10 A. There was also a deck, so to speak, on --  
 11 it was 2008, an older deck, about -- and it looks like  
 12 a presentation by someone about the on-line safety  
 13 team.  
 14 Q. Do you know who did that?  
 15 A. I don't.  
 16 Q. Was there just that one deck that you looked  
 17 at?  
 18 A. Yes.  
 19 Q. Did you look at any other materials related  
 20 to specifically the on-line safety team?  
 21 A. Yes. The form that -- I wouldn't call it  
 22 a consent, but there's a form that was signed by  
 23 Greg Blauert regarding acknowledging the content  
 24 he was reviewing and the scope of the job.  
 25 Q. Anything else?

Page 57

1 A. So, as part of my entry orientation into the  
2 group, I meet with all the managers, and so I would  
3 have met with Renee Yochum, who reports to -- who  
4 reported to Denise at the time, Stephen Sorensen, who  
5 reported to Renee, and Tammy Fairbanks, who reported  
6 to Stephen.

7 In talking about the wellness program,  
8 we didn't go into detail, into deep detail. At the  
9 time it was working was my understanding. Stephen  
10 had more than just -- not just, but he had more than  
11 the on-line safety team as his remit, so it was part  
12 of that, whereas, Tammy, that was a her team.

13 Q. And she told you she believed that it was  
14 working?

15 A. Yes.

16 Q. Do you recall anything more she said about it  
17 than that?

18 A. I don't.

19 Q. And you don't recall any details she gave you  
20 about the wellness program?

21 A. I don't.

22 Q. What, if anything, did she tell you -- well,  
23 let's go back.

24 What, if anything, did any of the people  
25 that you met with -- Denise Rundle, Renee Yochum,

Page 59

1 Q. Did any of those people tell you or did you  
2 gain a sense that any of those people owned the  
3 responsibility for making sure that the on-line safety  
4 content moderators were working safely?

5 MS. FRANCIS: Same objection.

6 A. No. They would -- as managers of the  
7 business, I would assume that they would -- so they  
8 were working with benefits, working closely with  
9 benefits -- right? -- to get this program set up.

10 They would be using all the resources that  
11 we made available to them, and they -- so they did --  
12 but they didn't discuss that with me, I own this.

13 Q. Did you hear any discussion from any of  
14 those four people about the training they had received  
15 regarding the potential impact of viewing this  
16 content?

17 A. I did not.

18 Q. Did you ever learn whether or not  
19 there was any training of the managers about how  
20 to make sure that they were keeping their employees  
21 safe?

22 A. Not specifically. I believe -- if I recall,  
23 Tammy would have gone through -- I think she talked to  
24 me about training, herself, because she's the manager  
25 of the team.

Page 58

1 Stephen Sorensen or Tammy Fairbanks -- tell you about  
2 their understanding of the potential harmful impact of  
3 viewing this content? Did any of them tell you  
4 anything about that?

5 A. I believe so. I believe it was back to sort  
6 of Denise's -- her response and he personal impact on  
7 employees, yes, and so she would have shared that.

8 We were trying to give them -- I remember  
9 her saying, "We're giving them ..." -- it was probably  
10 Tammy, not Denise -- Tamara -- "We're giving them ..." --  
11 included in this wellness program, Tammy had  
12 complete flexibility to do what she needed to support  
13 that team at the time.

14 My understanding is they could go home  
15 early if needed, they had a counselor available --  
16 they also had the Microsoft benefits -- and so I don't  
17 think it was lost on anyone how incredibly hard these  
18 jobs were and seeing this content is.

19 Q. Did any of those four people -- and we'll  
20 limit the conversation for the moment to those four  
21 people -- tell you who owned responsibility for making  
22 sure that the employees performing content moderation  
23 were safe?

24 MS. FRANCIS: Object to the form.

25 A. Can you rephrase the question.

Page 60

1 At the Stephen Sorensen level they would  
2 -- I think they would be using the skills that we  
3 train managers across the company, you know, to be  
4 sensitive to an employee's concerns, when to go  
5 absolutely to benefits, when to use HR, go through HR  
6 to get to benefits immediately.

7 If there was a -- you know, if there's  
8 a medical concern, to look for -- you know, to have  
9 open dialogue and honest, trusting teams so that  
10 people feel comfortable raising a concern if they have  
11 one with their manager.

12 It's up to the manager -- or the employee  
13 to disclose that with the manager. The manager then  
14 has an obligation to respond.

15 Q. All right.

16 A. And we had taken them through -- there was  
17 training that myself and my peers and CSS ran the  
18 month of April and May --

19 Q. Of what year?

20 A. 2013.

21 Q. Okay.

22 A. -- which was around managers' obligations,  
23 and it's called Managers and the Law, basically.

24 It's when to involve HR -- when to always  
25 go to HR and then when to involve HR, and obviously if

Page 61

1 it's involving HR, meaning myself, we didn't --  
2 they didn't have to worry about who to go to, they  
3 could have come to me to get to benefits or they could  
4 go directly to benefits, right? Benefits are there  
5 for them.

6 If it's involving me, it might be  
7 coaching, performance management, you know, they're  
8 having difficulty with -- you know, with a coaching  
9 scenario or something like that.

10 If they need to involve and -- absolutely  
11 have HR involved, it would be if they -- if there's a  
12 medical issue that's impacting their performance, if  
13 an LOA is needed, a leave of absence, if there's a  
14 violation of policy, if they suspect, you know, drugs  
15 and alcohol are involved.

16 Certainly if they're going to go to  
17 termination, it's a good habit to partner with HR.  
18 They do not need to. They don't need to, they can  
19 do it on their own.

20 Q. Let me ask you this. If managers believe  
21 that an employee might be under the influence of  
22 drugs or have some sort of alcohol issue that was  
23 affecting their performance, were they supposed to  
24 go to HR?

25 A. Yes.

Page 62

1 Q. Why?

2 A. They would go -- if they would reach out to  
3 me -- I happened to be the closest -- right? --  
4 and the most visible physically, so if I think of  
5 myself as a triage, they come to me, and then the --  
6 because it could be impacting, there could be medical  
7 issues involved, we'd want to get them to, like  
8 I said, that firewall and get them to an expert in the  
9 business of benefits at Microsoft.

10 So then they would step in and help,  
11 you know, from the employee perspective, and I could  
12 continue to coach the manager on -- you know, work on  
13 their performance, manage their performance separate  
14 from the medical issue. We leave that to the experts,  
15 and that's my benefits partner.

16 Q. So, if a manager believed one of their  
17 employees' performance was being affected by a drug  
18 or alcohol issue, they were required to go to HR, who  
19 would in turn refer them to benefits?

20 A. Yes.

21 Q. This training you mentioned, Managers and the  
22 Law, or something like that --

23 A. Uh-huh.

24 Q. -- was that another virtual training?

25 A. Yes.

Page 63

1 Q. And is that also a deck?

2 A. It was, yes -- I mean, it -- yeah. We had  
3 a deck then, yes.

4 Q. Were you involved in these virtual training  
5 sessions?

6 A. Yes.

7 Q. And what were the circumstances where  
8 a manager must go to HR, other than a suspected drug  
9 and alcohol issue?

10 A. Uh-huh. The reason we did the training at  
11 that time of year is because we're heading into  
12 rewards, and so that's typically a highly emotional  
13 time, too, for employees.

14 We prepare them on coaching, we prepare  
15 them on performance management, prepare them on a  
16 number of different issues, and then there is, say,  
17 part of the presentation that is around -- that's what  
18 I was talking about before -- when to involve HR and  
19 when to absolutely always go to HR.

20 Q. And what is the always-go-to-HR category?

21 A. The always-go-to-HR was -- well, I think what  
22 I was saying was the employee is stating that there  
23 is a medical issue that's impacting their performance,  
24 right?

25 Q. Okay.

Page 64

1 A. The employee might need to go on a leave  
2 of absence, they mention leave of absence or some time  
3 away, and it could be drug-and-alcohol-related or  
4 it could be a policy violation.

5 Q. So those are the three, for lack of a better  
6 term --

7 A. Four.

8 Q. -- four, for lack of a better term, mandatory  
9 reports --

10 A. Yeah --

11 Q. -- mandatory HR reports?

12 A. The slide says, like, "Always go HR."

13 Q. All right.

14 What did the coaching indicate to do if a  
15 manager was concerned that there was an issue that may  
16 be affecting the employee's performance that perhaps  
17 the employee didn't recognize?

18 A. So, the manager, to be curious, to ask  
19 questions, you know, of the employee: Is there  
20 anything that's impacting your work? Is there  
21 anything -- you know, any additional support you might  
22 need. They could send them to MS Cares, which is our  
23 employee assistance program, but it's really to be  
24 curious.

25 The employee still has the obligation

Page 73

1 open job to go find it, but, you know, our policies  
2 are pretty clear on HR Web about internal transfers  
3 and applying for roles and --.

4 So the manager is the first point of  
5 contact for that, for them to, you know, have that  
6 conversation, but we -- we'd all be accessible to the  
7 employee, whether it was Steve or myself or the  
8 managers and the -- whoever the employee felt  
9 comfortable going to.

10 Q. During the time you were there, did  
11 anybody from the on-line safety team ever call you  
12 and tell you they needed help finding a new job?

13 A. I don't recall that, no.

14 Q. And have you looked and investigated to see  
15 if anybody else came to HR and said, I need you guys  
16 to help me find a new job?

17 A. No.

18 Q. Okay.

19 A. I recall a conversation with Tammy that  
20 was -- we were talking about the team, and we were  
21 talking about how long is a good length of time to  
22 stay on that team.

23 I also know she had had a conversation --  
24 if I recall, she had had a conversation with Greg  
25 about, you know, maybe you do move off to another role

Page 75

1 those, and have they turned it around so that,  
2 you know, they would be successful in another role at  
3 Microsoft, or is just like -- is it something that  
4 would be true of any role at Microsoft.

5 Then we'd say, you know, it's probably not  
6 a good idea to go to another team, so that's why  
7 I'm thinking it was probably before that, that the  
8 conversation she had with me --

9 Q. I was just going to say, so you think it was  
10 around May, June or July. Is that your testimony?

11 A. Yes.

12 Q. All right. And was this the first  
13 conversation you had had with her like that?

14 A. Yes.

15 Q. Was it the only conversation you had with her  
16 about anything like that?

17 A. About Greg specifically, yes.

18 Q. And had you spoken with her --  
19 and I'm not asking you to identify who -- about any of  
20 the other people on her team having difficulty with  
21 content?

22 A. No.

23 Q. So is this the one and only conversation you  
24 had with Tammy Fairbanks about an employee having  
25 difficulty with content?

Page 74

1 and -- besides just pulling him out of content, is it  
2 time to look for a new role, and what she shared with  
3 me was that Greg said, "No, I don't want to do that,  
4 because then somebody else would have to take my job."  
5 And it was really powerful. I remember that to this  
6 day.

7 Q. Let's talk a bit more about that.

8 A. Yeah.

9 Q. Tell us everything you remember about this  
10 conversation.

11 A. Uh-huh. So, I remember talking with Tammy,  
12 and she had caught me in the copy room, and I --

13 Q. When would this have been?

14 A. I believe this would have been -- I don't  
15 recall the exact month, but it would have been before  
16 -- before the rating of -- the low rating would have  
17 come in, because -- I know that because I would have  
18 asked a little bit different questions.

19 My questions would be, if I had known  
20 that -- so that's why I'm thinking it was probably May  
21 or June or July, prior to the rewards conversation.  
22 The reason being is if someone is a 5 in the old  
23 system, I would ask are there competencies -- apart  
24 from the content, are there competencies that we're  
25 seeing, needing improvement, and you coach them on

Page 76

1 A. That I recall.

2 Q. And that is Greg. So it was a conversation  
3 you recall about Greg Blauert?

4 A. Yes.

5 Q. And you recall you were talking with her when  
6 she caught you the coffee room?

7 A. Copy room.

8 Q. Copy room.

9 A. Yeah.

10 Q. Go ahead and tell us what you recall about  
11 the conversation.

12 A. It was Greg's concern about his role in that  
13 team, that he had been pulled out of some of the  
14 content I think since February, so a short period of  
15 time he had been pulled out but still was struggling.

16 And so I had said, "Well what if we  
17 consider rotating those people out, right? You go to  
18 another job, how long can you actually -- you know,  
19 how long is good to stay in that role?"

20 She said, "Well, I actually talked to Greg  
21 about that, and Greg had said, 'I couldn't move  
22 because that would mean somebody else would have to  
23 take this job'."

24 Q. And I think you indicated that that had an  
25 impact on you. In what way?

Page 77

1 A. It did, because I was visualizing someone  
2 being in those roles for ten years, you know, but at  
3 what point -- you know, it can't help but impact  
4 you -- right? -- and so -- and she was also describing  
5 the team and that the team cohesion was really  
6 important, so having the support of the team was  
7 critical and that dynamic of the team, so it seemed to  
8 work.

9 But I know I had a question in my head,  
10 thinking, you know, Wow, I'm surprised he wouldn't  
11 want to -- he could move -- right? -- to another role.

12 Q. Okay. You say he could move to another role.  
13 Again, what is the basis for your statement?

14 A. That using our -- it's an open-door policy at  
15 Microsoft, so -- and you can apply for other roles  
16 at any time, so he could have done that, and we would  
17 have absolutely supported that, you know, if he had  
18 come to us with that.

19 Q. And how did this conversation start?

20 A. It started with Tammy approaching me to  
21 talk about him, talk about Greg, and the conversation  
22 she must have been having with him. That's what I can  
23 recall.

24 Q. Do you remember kind of like what her lead-in  
25 was? Because you didn't know Greg, then, right?

Page 79

1 talk about Greg or, There's a situation I want to talk  
2 about. I don't recall that. But the topic was Greg,  
3 so it -- you know.

4 Q. And you knew at that point in time that  
5 somewhere during the course of this conversation his  
6 name came up?

7 A. Yes.

8 Q. All right.

9 So she said she had talked to him,  
10 and then you asked about rotating him out,  
11 and she indicated that he didn't want to move because  
12 then someone else would have had to come and do that  
13 job?

14 A. Yes.

15 Q. And you remember that distinctly?

16 A. Yes.

17 Q. What was your reaction to that?

18 A. My reaction was -- and that's what -- the  
19 follow-up conversation was around the team dynamics  
20 and helping to understand, Why would that -- you know,  
21 Why would that be? That's really interesting. So it  
22 was me thinking, you know, I probably don't quite  
23 understand the dynamics of what that is in working on  
24 that team.

25 You know, that's when she described the --

Page 78

1 A. Huh-uh -- huh-uh.

2 Q. You had had one meeting with Tammy, correct?

3 A. I don't recall.

4 Q. Well, you didn't know her very well, did you?

5 MS. FRANCIS: Object to the form.

6 A. No.

7 Q. And when did you say you got there?

8 A. April.

9 Q. Of 2013?

10 A. Yes.

11 Q. So you had been there a month?

12 A. Yeah.

13 Q. All right. So she catches you in the  
14 copy room, and what do you recall her saying to  
15 introduce this topic?

16 A. It was sort of in passing and so -- but it  
17 was wanting to talk a little bit about Greg. That's  
18 all I recall.

19 Q. And she used his name?

20 A. I don't recall.

21 Q. Well, you used his name, so I'm trying to  
22 figure out if she hadn't used his name, why you were  
23 using his name.

24 A. I was saying she did not -- I don't know if  
25 the conversation started with her saying, I want to

Page 80

1 It's a unique team, they rely on each other, and so I  
2 was, like, Oh, okay. So if you take one person out,  
3 it disrupts the team dynamics, and these folks are  
4 dedicated professionals to this business.

5 Knowing Denise's passion about it,  
6 that's the way they described it to me, is this is  
7 work that they were -- they were absolutely dedicated  
8 to doing.

9 Q. Did it cross your mind to look at whether  
10 or not this might be, for lack of a better term, a red  
11 flag for somebody who really should come out, whether  
12 they recognized it or not?

13 MS. FRANCIS: Object to the form.

14 A. No, it didn't, because the -- what I did was  
15 coach the manager -- right? --that this is always an  
16 option for them and we could help, and then it's up  
17 to her to ensure that she's having conversations with  
18 the employee.

19 So there was no other action at that point  
20 except to, you know, check back in in the next  
21 one-on-one I would have with her: How's it going with  
22 the team? Are you having further conversations with  
23 Greg?

24 But that was when I was pulled to doing  
25 the reorg and we had actually had Zoe come in, so I'm

Page 81

1 -- I don't recall another one-on-one with Tammy, but  
 2 we were in the same building -- close to the same  
 3 building, and so I would see her for sure.  
 4 Q. Okay.  
 5 A. Uh-huh.  
 6 Q. Did you have a conversation -- I'm sorry.  
 7 Did you make any kind of notation  
 8 of this interaction that you had with Tammy about  
 9 Greg?  
 10 A. Written?  
 11 Q. Yes.  
 12 A. I don't recall.  
 13 Q. Because we've heard a lot of people  
 14 complaining about the fact, it's five years later and  
 15 you're asking me to remember things, and you seem to  
 16 remember this conversation pretty clearly. At least  
 17 you're reporting that you do.  
 18 Have you looked at anything to  
 19 refresh your recollection about this conversation?  
 20 MS. FRANCIS: Object to the form.  
 21 A. Not about this. There's nothing written.  
 22 Q. So it actually sounds like what really  
 23 happened is you were brand-new at this job, and while  
 24 you might have under other circumstances dug a little  
 25 deeper into it or circled back with Tammy, there was a

Page 83

1 it was more of a drive-by, and so --.  
 2 She was new to Microsoft, and she was  
 3 learning to be a manager, as well, and so making sure  
 4 that we -- I was working with Stephen. Stephen's a  
 5 very -- you know, he's a very conscientious manager,  
 6 and so he would often answer the way I would answer  
 7 things anyway.  
 8 I mean, she had an amazing support system,  
 9 you know, with Stephen, Renee, Denise, all the way the  
 10 chain, of folks that are really very caring -- right?  
 11 -- and empathetic leaders.  
 12 So I -- I mean, that one conversation  
 13 stands out to me. I know I had other conversations  
 14 with her because I just -- I picture her -- I can  
 15 picture her in the hall and -- I think we passed  
 16 getting coffee or, you know, whatever, and so  
 17 there were probably little snippets of conversations  
 18 here and there.  
 19 Q. Okay.  
 20 A. So, for me to say I never had any other  
 21 conversations or meetings with her, it wouldn't be  
 22 accurate.  
 23 Q. I think we were at -(h), 6(h), on page 5, and  
 24 apparently accessibilities management might not be a  
 25 term you're --.

Page 82

1 lot on your plate, so you moved on?  
 2 MS. FRANCIS: Object to the form.  
 3 A. I wouldn't agree with that statement because  
 4 there was -- it was my responsibility -- right? -- and  
 5 so I would make sure the managers had the tools and  
 6 that they would come to me, proactively, if there had  
 7 been -- if there was a situation -- right? --with an  
 8 employee.  
 9 Q. Did you have any other conversations  
 10 with Tammy Fairbanks, that you recall, including about  
 11 her own issues surrounding viewing content?  
 12 A. I know I did. I can't recall the specifics  
 13 of the --.  
 14 Q. Why is it you think you recall the specifics  
 15 of the conversation with her about Greg?  
 16 MS. FRANCIS: Object to the form; asked  
 17 and answered.  
 18 A. Because it struck me emotionally. I was new  
 19 to the organization and again, like I said, I never  
 20 knew that Microsoft was in this business, and so  
 21 logically it just didn't make sense to me. That's why  
 22 I remember.  
 23 I think I remember because it was the copy  
 24 room, too, so -- because it wasn't my office,  
 25 it wasn't a call, it wasn't a regular -- you know,

Page 84

1 DoD, have you heard of that?  
 2 A. Department of Defense?  
 3 MS. FRANCIS: DAD, disability answer desk.  
 4 (Discussion off the record.)  
 5 A. That was after my tenure.  
 6 Q. "All reports OST or accessibilities  
 7 management made to HR employee safety recommendations  
 8 to improve OST or accessibility from the HR  
 9 perspective."  
 10 First of all, what did you do to try  
 11 to familiarize yourself with the Microsoft history on  
 12 this issue?  
 13 A. Uh-huh. So there were a couple of emails,  
 14 one or two, from Jenny Lay-Flurrie, so -- and she had  
 15 come in after my tenure -- we passed in the January  
 16 time frame -- and so I know that she -- if I recall,  
 17 she was -- in her onboarding she probably would have  
 18 been onboarded into what this team does.  
 19 She was like the -- at her -- when I think  
 20 about her level, I think she probably -- I don't know  
 21 at the time Stephen reported to her. I'm not sure  
 22 what that was.  
 23 However, there were emails with her  
 24 looking into the -- like, a signed consent, and  
 25 my guess is -- I mean, she's our accessibilities --

## **Exhibit 2**

EXHIBIT AD

## Policy Overview

**"When In Doubt" Policy:** In October 2012, the Online Safety Team began the adoption and development of a new policy (a) to ensure content reported to NCMEC was, in fact, illegal child sexual abuse material and (b) to reduce the risk a customer's account was shut down in error. This policy was implemented over the course of 2013.

There were three primary reasons for this decision:

- First, there were occurrences where a customer's account was closed because content was incorrectly identified as illegal child sexual abuse material, and Microsoft wanted to reduce the possibility of errors.
- Second, Microsoft wanted to improve the accuracy of its submissions to NCMEC to ensure that NCMEC received actionable information and was not flooded with inaccurate reports (the latter of which strained NCMEC resources). Ensuring and improving quality of NCMEC reports would also better allow NCMEC and law enforcement to action reports within the statutorily-allowed time frame for holding suspected CSAM.
- Third, while Microsoft has always been committed to fighting CSAM on its services, it realized that commitment must be balanced against a customer's expectations of privacy in their private folders. Reducing false reports and erroneously shutting down accounts would further Microsoft's efforts to both fight actual CSAM and uphold customer privacy.

**Forensic Investigations:** In Fall 2010, members of the Online Safety Team raised the idea to conduct "forensic investigations" into accounts where CSAM was found.

- Impetus for the project started with the Online Safety Team. Team members wanted to investigate accounts already identified as violating terms of use to: 1) locate additional potentially illegal images within accounts; 2) identify accounts where the images came from and search through those accounts; and 3) identify accounts that received the images and search through those accounts.
- Microsoft understands that Online Safety Team manager Jan Clausen supported the idea of Forensic Investigations, but higher-level managers were not as supportive.
- The Online Safety team worked on implementing a pilot forensics project by winter 2010 – 2011, which later evolved into a more fulsome forensics program.
- Eventually, forensics work shifted to the vendor in Manila.

The forensic investigations program went beyond what was required by the law and raised concerns regarding customer privacy. With customers, including businesses, storing increasing amounts of data in the cloud, it was important to maintain confidence in the security and privacy of that data. By May 2014, Microsoft formalized a policy for Child Sexual Abuse Material (CSAM) Detection & Reporting, in which Microsoft recognized a customer's expectations of privacy and security when storing data in Microsoft's cloud. Forensic investigations by the company ended with the recognition that such investigations could and would be handled by appropriate law enforcement agencies based on the probable cause established through Microsoft's NCMEC reports.



**Moderation of Private Content:** Over the years, Microsoft's approach to moderation of private content involved both automated scanning and active human review. By 2012, Microsoft realized active moderation of private folders in OneDrive and the forensics investigation project were not going to be scalable and with increasing use of cloud storage, risked violating customer privacy rights and expectations. Microsoft became aware that actively investigating private folders where the customer had not shared content risked transforming it into an agent of the state and subjecting it to Fourth Amendment limitations, which could result in the exclusion of evidence needed for prosecuting individuals who possessed CSAM. After significant consideration, Microsoft determined that to protect its customers and scale the business in a manageable way for Microsoft employees and vendors, it would cease actively scanning private folders in OneDrive while continuing to scan public folders and images shared from private folders to others:

- In October 2012, active moderation in private folders on Skydrive ended.
- As a result of the policy change formalized in May 2014, all moderation of private content ended, including PhotoDNA scanning of private folders.

The effect of these policy changes was to reduce the amount of employee and vendor exposure to CSAM and other graphic or disturbing content.

## Tools Overview

The Online Safety Team has used a variety of tools over the years, which have evolved and improved as time has gone on. These tools are aimed at handling Terms of Use (TOU) violations for a variety of products. The implementation and/or deployment of a particular tool depended on the content involved along with the TOU associated with the product. Depending on the maturity level a product allowed, the TOU may need to be supported differently than another product or service. As such, the Online Safety Program Managers worked as consultants and in concert with products to identify tools needed and/or changes to be implemented to enforce the TOU.

**PhotoDNA:** This tool takes hash values from images that are known to be illegal Child Sexual Abuse Material (CSAM) and scans Microsoft's platforms for those same hash values, allowing Microsoft to efficiently identify and remove known CSAM. Microsoft began developing this technology in 2008 with Professor Hany Farid, from Dartmouth, in a joint effort to help NCMEC solve the rise in CSAM that accompanied the growth in Internet services and platforms. It took Microsoft and Professor Farid a year to develop PhotoDNA. It was a groundbreaking technology that allowed Microsoft, NCMEC, and others in the industry to detect and remove from the Internet millions of CSAM images per year.

- Microsoft donated PhotoDNA to NCMEC in December 2009.

- PhotoDNA was first launched on Microsoft platforms in May 2010 with OneDrive (formerly SkyDrive), and its use was expanded to Microsoft's various platforms over the years.
- In May 2011, Facebook began using PhotoDNA. It was the first technology company other than Microsoft to use it.
- In 2011, members of the Online Safety Team proposed expanding PhotoDNA to other types of terms of use violations, including adult images, spam, and violent images. That proposal was not adopted.
  - Reason PhotoDNA for other content types was not adopted included: 1) complexity of implementation, 2) lack of clarity or consensus on how Online Safety would generate a trusted database of known hashes for these other content types, and 3) technical difficulties to effectively implement at scale.
  - No manager rejected the idea outright, but the team was asked to provide concrete costs and benefits for implementation along with further technical specifications on how it could be effectively applied across different types of content.
- In 2012, members of the Online Safety Team proposed expanding the current hash database to include hashes from industry partners. In 2013, a preliminary test was initiated with Facebook after the development and adoption of the classification matrix; however, the results were not promising because there were too many false positives, and the program was not adopted.
- In late 2012 and early 2013, members of the Online Safety Team proposed expanding the hash database to include CSAM identified by the team during its content reviews. While the proposal was not initially adopted, as it was determined that additional elements would be required given in part the results from the preliminary test with Facebook's hash sharing initiative, the proposed concept continued to receive focus, with eventual development and deployment. In 2014 the Microsoft PhotoDNA Cloud Service launched, followed in 2016 by the deployment of the Microsoft Hash Database across numerous products.

**Integrated Online Safety Engine:** This tool was proposed as a means for handling all types of abuse reports from customers and products, coupled with a policy engine that would potentially dictate how to handle the content per line of business (e.g. Skydrive, Bing, MSN). In theory, IOSE would have allowed an agent to tag an image as CSAM or terms of use violation forever, meaning the image would keep that tag regardless where it showed up in Microsoft's services or platforms. In theory, this could have reduced agent need to re-review the image when it appeared in a different platform at a later time.

- IOSE was proposed in May 2010 by the Online Safety Team and was subsequently discussed on and off from 2010 to 2012, but it never came to fruition.
- IOSE was never developed for a number of reasons: 1) it was not designed or technically structured to scale to the sheer volume that services were increasingly experiencing or the variety of services coming online; 2) there was a failure to provide concrete technical specifications needed for an engineering team to engage, including how or whether new and drastically varying platforms and products could be effectively and efficiently connected to IOSE, what would be required to maintain and update IOSE, or how or whether it could be scaled to the incredible growth in internet-based services (growth in terms of variety and

usage); and 3) lack of detail on the implementation costs and benefits, including lack of detail on how much storage space it would require, whether it would require storing actual images or just hashes, whether/how Microsoft could store actual images without violating laws prohibiting storing and distributing CSAM.

- No manager rejected the idea outright, but it fizzled out over time because the Online Safety Team was unable to show that it was technically feasible or scalable.
- While the tool was never developed as proposed by the team, there were similar solutions that were developed and deployed over this same time by Microsoft. These solutions were 1) Report Abuse Violation (RAV) in 2013 as a centralized process for customer reported TOU violations, and 2) the Marketplace CVS service that included a suite of automated content scanning tools, which Microsoft started developing in 2012, with yearly improvements and expansions in services over the years, including a video classifier in 2014.

**Classification Matrix:** This "classification matrix" or "content ranking matrix" was developed to provide a ranking and classification system for Child Sexual Abuse Material with specific definitions and has been shared with others in the industry.

- Matrix was developed in November 2012 and appears to have been developed in response to the "when in doubt" policy change, so that more definitive determinations could be made on how to classify images. The Matrix was implemented over the course of 2013.
- Sharing with the industry was seen as a positive first step to effective and efficient hash collaboration.

**Other Tools:** The Online Safety Team has used a variety of tools over the years, including:

- **Unified Admin Tool (UAT)** – used to review and report images to NCMEC. In September 2009, UAT received an update for Windows Live SkyDrive. The update (a) consolidated all images for Spaces, Profiles, and SkyDrive into the SkyDrive UAT, resulting in less complicated workflows, cost savings, and reduction in redundant agent work; (b) changed the way agents viewed files in WL SkyDrive by including a thumbnail of the image so that agents could quickly check the image without having to click on each one and view in full screen; and (c) gave agents a button within WL SkyDrive to file reports with NCMEC for users who didn't have an account in WL, so that agents no longer had to create a dummy WL space to file the report. This last change allowed for more detailed reports to NCMEC and ultimately, law enforcement. Over the years the UAT tool continued to be updated as bugs were fixed and SkyDrive/OneDrive was updated.
- **Web User Edit** – used to investigate/shutdown email accounts that violated terms of use
- **Passport Support Tool** – used to verify a user's account status and to block/ban a Microsoft user. In fiscal year 2011 (i.e., 2010), changes were made to the PST tool to allow CPSS to support customers on new features. The Windows Live group (not OST) was also discussing developing a shared support tool to replace PST and WUE.
- **Image Classifier** – used to automatically identify potential terms of use violations based on skin tones. Image classifier was implemented around 2011-2012, and used in Bing and SkyDrive. Over the years, each product group iterated new versions of image classifier to adopt to its particular business needs and reduce the amount of false positives. CVS deployed image classifier in Marketplace (third-party apps) around 2013.

- **File Finder** – tool created specifically to help agents moderating content in SkyDrive. It allowed agents to find specific files and was used as part of the forensics investigation project. Gary Anderson requested this tool and it was deployed around summer 2012.
- **Bing Index Tracker (BIT)** – Tool used to review images on Bing. In November 2011, the team identified issues with this tool breaking. It is unclear whether the team proposed an alternative tool for Bing. In 2012 members of the Online Safety Team identified the need for improved reporting in BIT; again, it is unclear whether the team proposed solutions.
- **CVS** – centralized tool for content moderation across Microsoft products, which Microsoft began developing in 2012 and began deploying automated scanning in Windows Phone Store and PinPoint in around 2013. By 2014, CVS added a video classifier. CVS has continued to add products over the years to continue centralizing automated scanning and NCMEC reporting.
- **Avert** – This is a tool within CVS that replaced UAT and allows agents to review images in thumbnail, blurred, and black/white format to reduce human impact. This tool was added in 2016.

**Requests for Tools:** Requests for tools had to be approved by managers within the Online Safety Team and the relevant product groups, and required funding approval from individual lines of business (i.e., from the product groups). The process of funding approval involved concrete technical specifications needed for an engineering team to engage and detail on the implementation costs and benefits. Funding and development decisions were ultimately made by the product groups, not by CSS, the organization within which the Online Safety Team sat.

- The direct managers of the Online Safety Team during the relevant time were: Ronald Schrieber, Julie Lang, Jan Clausen, Tamara Fairbanks, Jenny Lay-Flurrie, Neil Barnett, and Jeff Lilleskare.
- Skip-managers includes: Brian Stoner, Phil Goatley, Matt Fingerhut, Stephen Sorensen, Rene Yoakum, Denise Rundle, Jenny Lay-Flurrie, and Todd Parsons.
- When tool requests were denied, it was often because of:
  1. Failure by the Online Safety Team to provide sufficient specificity to support the request either at a technical level and/or with a cost-benefit analysis
  2. Lack of budget within the product group
  3. Lack of engineering resources within the product group

## **Exhibit 3**

EXHIBIT AD

Page 1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

HENRY SOTO, et ux., SARA )  
SOTO, as guardian for her )  
minor child, CALUM SOTO, )  
GREG BLAUERT, et ux., )

Plaintiffs, ) No. 16-2-31049-4 SEA

vs. )

MICROSOFT CORPORATION, )

Defendant. )

30(b)(6) DEPOSITION UPON ORAL EXAMINATION OF  
MICROSOFT CORPORATION  
ROBERT SIZEMORE

Taken at Schroeter Goldmark & Bender  
810 Third Avenue | Suite 500  
Seattle, Washington

DATE TAKEN: June 1, 2018  
REPORTED BY: Mary A. Whitney, CCR - WCRL #2728

Page 3

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(Cont'd)

Page 4

30(b)(6) DEPOSITION OF MICROSOFT CORPORATION  
ROBERT SIZEMORE

EXAMINATION INDEX

| EXAMINATION BY | PAGE |
|----------------|------|
| Mr. Wells      | 6    |
| Ms. Roe        | 75   |
| Mr. Wells      | 105  |
| Ms. Roe        | 110  |

EXHIBIT INDEX

| EXHIBITS FOR IDENTIFICATION                                      | PAGE |
|--|------|
| No. 167 - Policy Overview  | 19   |
| No. 168 - Letter, 5/22/18, Francis to<br>Roe, Wells and Trumbull | 19   |
| No. 169 - Informed Consent                                       | 98   |
| No. 170 - PowerPoint   | 110  |

(Cont'd)

1 (Pages 1 to 4)

EXHIBIT AD

Page 73

1 presentations to management on mental health.  
2 I suspect, given my time on the team and our  
3 interaction with Denise Rundle and Stephen Sorensen,  
4 that we would have discussed the wellness program with  
5 them.

6 Whether they had a full presentation  
7 I couldn't speak to. That would have been on Damien  
8 and/or Tammy to present.

9 Q. And Denise -- so did you do any  
10 storytelling -- well, strike that.

11 But you weren't involved in any of the,  
12 like, PowerPoints, then, if there were any, to upper  
13 management about that?

14 MS. FRANCIS: I'll object to the form.

15 A. I would have been involved in helping draft  
16 the templates, as well as making sure the content made  
17 sense, so Damien would have been on point at the  
18 subject-matter expert, or Henry, for example, would  
19 have also been involved as a PTL to add content to  
20 the wellness program that would be presented.

21 However, I might help shape and craft that  
22 story to make sure it's targeted, that it has the  
23 right emphasis points, and whether or not it's just a  
24 bunch of bullet points on a PowerPoint slide or it  
25 actually has good content that pops and resonates with

Page 75

## EXAMINATION

1 BY MS. ROE:

2 Q. As I understand it, Mr. Sizemore, you didn't  
3 talk to anyone at Microsoft in order to prepare for  
4 your testimony, with the exception of in-house  
5 counsel?

6 A. That is correct.

7 Q. And with regard to documents that you might  
8 have reviewed, that you largely don't remember except  
9 for PowerPoints, how were the documents that you  
10 reviewed selected?

11 MS. FRANCIS: I'm going to object to the  
12 form, and also to the extent this calls for  
13 attorney-client-privileged work-product information.

14 A. The documents were collated from counsel and  
15 brought together as it relates to the actual subject  
16 I'd be testifying on.

17 Q. So counsel for Microsoft presented you  
18 with the documents that you should review in order to  
19 provide your testimony; is that correct?

20 MS. FRANCIS: Same objection, and I think  
21 this is calling for attorney-client-privileged  
22 work-product information.

23 A. Given my personal experience did not span the  
24 entire length of the team, there was documentation  
25

Page 74

1 the audience.

2 Q. All right. But as you sit here now, you  
3 don't recall whether or not you ever were involved in  
4 that project?

5 MS. FRANCIS: Objection; asked and  
6 answered.

7 Q. You can answer.

8 A. Correct. I don't recall.

9 Q. Do you know what the DSM is?

10 A. I'm sorry, I don't recall.

11 Q. The Diagnostic Statistical Manual having  
12 to do with mental health? Do you know anything about  
13 that?

14 A. I don't.

15 MS. FRANCIS: I'll object again.

16 It's all within the scope of your personal  
17 capacity as opposed to your role as a corporate  
18 representative. But go ahead.

19 A. From my personal knowledge, I do not.

20 Q. All right.

21 (Pause in the proceedings.)

22 MR. WELLS: I don't have any anything  
23 further.

24 MS. ROE: I have a questions.

25 -o0o-

Page 76

1 needed in order to educate me on all of the tools and  
2 resources, as well as some of the preexisting and --  
3 as well as what went on after my exit from the team.  
4 So, yes, it was provided.

5 Q. Tell us about the development of Exhibit-167.

6 MS. FRANCIS: Again, same objection. It  
7 calls for disclosure of attorney-client-privileged  
8 work-product information.

9 A. The development was simply that  
10 a summary of all the documentation as was relevant to.  
11 As you can imagine, with a very large set of material,  
12 you want to condense it down to the most critical  
13 points or the salient points related to the specific  
14 topic.

15 Q. Well, let's start over.

16 I assume that this document, Exhibit-167,  
17 that you've testified from -- in fact, read into  
18 the record in significant parts -- is the end product  
19 of some earlier drafts. Is that accurate?

20 MS. FRANCIS: Same objection. I think  
21 this is all calling for attorney-client-privileged  
22 work product.

23 MS. ROE: I think you have undoubtedly and  
24 unequivocally waived attorney-client work-product  
25 privilege. This is not a document that was

Page 77

1 investigated by him under a 30(b)(6). This is  
 2 a document that was prepared by counsel.  
 3 MS. FRANCIS: That is incorrect.  
 4 MS. ROE: Well, let's get his testimony.  
 5 A. So, this document I drafted from  
 6 what was provided to me from counsel. As I mentioned,  
 7 I pulled the salient points as what I saw as relevant  
 8 that would help me answer the questions as accurately  
 9 as possible, given that I was being asked on dates,  
 10 times, how things were implemented and when they  
 11 were implemented outside of my general scope on the  
 12 team.  
 13 Q. Let's talk about the process.  
 14 When did you first started reviewing  
 15 documents in preparation for your 30(b)(6) testimony?  
 16 A. This would have been a few weeks ago.  
 17 I would say at least three, four weeks.  
 18 Q. And how did you receive the documents?  
 19 A. Meaning the form?  
 20 Q. Email or SharePoint, or a sit-down in  
 21 a conversation. How?  
 22 A. It was a sit-down in a conversation with  
 23 counsel. I was presented with what was perceived  
 24 as relevant material to help me educate myself on the  
 25 topics. It was a binder.

Page 78

1 Q. So you were presented with a binder  
 2 from counsel. And how long did that initial meeting  
 3 last?  
 4 A. From my recollection, the meeting was four to  
 5 maybe five hours.  
 6 Q. Did you review those documents at the time  
 7 of that initial meeting?  
 8 A. The sheer quantity wouldn't necessitate -- or  
 9 didn't give me enough time to read everything in that  
 10 four-to-five-hour period.  
 11 Q. Okay.  
 12 A. I took several days thereafter and my own  
 13 weekend time to comb through the material and  
 14 understand what was being presented.  
 15 Q. And if you didn't read the binder of  
 16 materials that you were presented initially during  
 17 this first four-to-five-hour meeting, what else  
 18 occurred during that meeting?  
 19 MS. FRANCIS: Objection. This calls for  
 20 attorney-client privileged work-product information.  
 21 I don't know that he can answer this  
 22 question. The meeting was with counsel, was with  
 23 inside counsel and outside counsel, and so the whole  
 24 meeting was attorney-client-privileged.  
 25 He told you the meeting happened, he told

Page 79

1 you what happened, and he told you the documents.  
 2 I think that's as far as he can go.  
 3 MS. ROE: Are you instructing him not to  
 4 answer?  
 5 MS. FRANCIS: I'm not instructing him  
 6 anything. I'm saying the entire meeting was  
 7 attorney-client-privileged and work product. You're  
 8 asking him about discussions with counsel.  
 9 It's up to him to decide if that will  
 10 disclose attorney-client information. I think you're  
 11 asking for it.  
 12 MS. ROE: And I think you've waived it.  
 13 MS. FRANCIS: We've not waived anything.  
 14 MS. ROE: Okay.  
 15 MS. FRANCIS: This is a document he just  
 16 testified that he prepared. He didn't say he prepared  
 17 it in that meeting --  
 18 MS. ROE: No, he didn't say that.  
 19 MS. FRANCIS: He did. He said that he  
 20 prepared it.  
 21 MS. ROE: Okay.  
 22 Q. You had a four-to-five-hour meeting.  
 23 You were handed a binder of documents prepared by  
 24 counsel, or selected by counsel. You didn't read all  
 25 of the documents at that meeting, but this meeting was

Page 80

1 four to five hours with the attorneys, correct?  
 2 A. It was four to five hours with the attorneys,  
 3 yes.  
 4 Q. All right. And the meeting occurred where?  
 5 A. On Microsoft's campus.  
 6 Q. And how many attorneys were there?  
 7 A. Two to three.  
 8 Q. Well --  
 9 A. We had two, and we had three at one point,  
 10 and then one would leave the room, so it was between  
 11 two to three, not for the full four to five hours.  
 12 Q. And Blake, the in-house counsel, as present  
 13 here today, was she present?  
 14 A. She was.  
 15 Q. And how about Ms. Francis?  
 16 A. She was.  
 17 Q. And who else came in and out?  
 18 A. Well, outside counsel did not leave the room,  
 19 other than for bathroom breaks, but Rob -- I forget  
 20 his last name -- was also there.  
 21 Q. Rob Maguire.  
 22 A. Rob Maguire.  
 23 Q. All right.  
 24 Now, during the course of this  
 25 four-to-five-hour meeting, were you given other

Page 81

1 factual information?

2 A. I was asked questions from my own personal  
3 experience. Given the fact that I was the program  
4 manager on the team involved in tool development,  
5 my added insights that are not in documents or maybe  
6 personal experiences were part of the discussion.

7 Q. Were you given any information, factual  
8 information, by counsel during the course of that  
9 meeting?

10 MS. FRANCIS: Objection; asked and  
11 answered.

12 A. Outside of the binder, I was simply being  
13 asked questions about my experience.

14 Q. What did you then do following that  
15 four-to-five-hour meeting?

16 A. As mentioned, I then took it serious and sat  
17 down as a representative of the company to educate  
18 myself on IOSE, PhotoDNA, the tools, the policies,  
19 some of which I already had some personal knowledge  
20 of, but there was additional documentation that was  
21 outside of my scope and role, either based on  
22 my tenure with the team or even just because it wasn't  
23 under my purview.

24 Q. All right. So then you spent how much time,  
25 approximately how much time, reviewing the binder of

Page 83

1 Q. Did you ask for any additional documents?

2 A. From what I could tell in the folder,  
3 that was more than sufficient. I didn't see the need  
4 of asking for or requesting additional documentation.

5 Q. So the answer is no, you did not ask for any  
6 additional documents?

7 A. Correct.

8 Q. Did you ask to review the depositions of  
9 any other people in this case?

10 A. I did not ask to review depositions, no.

11 Q. And I think you've indicated you didn't  
12 review -- you are not aware that you reviewed  
13 Jay Cramer's and you know you didn't review

14 Brenda Chamberlain's. Did you review Damien Vaught's?

15 A. No, I did not.

16 Q. How about Matt Sullivan?

17 A. I did not.

18 Q. I think you also said you did not review  
19 Mr. Sorensen's?

20 A. Correct.

21 Q. It sounds like you really only reviewed your  
22 own?

23 A. Primarily, it was mine. I do recall some  
24 documentation in relation to Henry and Greg. I don't  
25 know if that was the actual deposition itself.

Page 82

1 material?

2 A. Well, given the fact that it was a very large  
3 binder, I would say that I took easily two to  
4 three weeks reading as much as I could at any given  
5 time, flipping through the pages of the presentations,  
6 trying to digest as much of the volume as I could, and  
7 to distill the points out of the document -- or the  
8 set of documents, that I could use for reference.

9 Then I asked the attorneys if I could  
10 bring in a document to help reference, which is  
11 what the product is before us.

12 Q. Let's talk about the process you went through  
13 when you were reviewing the binder full of documents.

14 Are we talking about, like, one  
15 three-inch, three-ring binder?

16 A. The binder behind you is probably, what, six  
17 to seven inches? It's about that size.

18 Q. And did you make notes on any of those  
19 documents?

20 A. I refrained from doing anything to the actual  
21 documents themselves, but I did use a legal pad to  
22 bullet out my ideas and anything I saw in a particular  
23 presentation or document. I might have dog-eared a  
24 couple of pages so I could go back and reference them  
25 again.

Page 84

1 As I said, the binder was large and I went over a lot  
2 of documents over the course of a couple of weeks.

3 Q. Then at what point did you first present your  
4 written product to counsel?

5 A. I submitted my written product via email  
6 communications under attorney-client privilege  
7 to counsel for review maybe a week and a half ago  
8 as the initial draft.

9 Q. Then what happened?

10 MS. FRANCIS: I'm going to object. This  
11 calls for attorney-client-privileged work-product  
12 information.

13 A. I continued to iterate on the document and,  
14 as mentioned, there were other prep sessions with  
15 counsel.

16 Q. So when you say "iterate on the document,"  
17 you mean make changes to the document based on your  
18 conversations with counsel --

19 MS. FRANCIS: Same objection.

20 Q. -- is that correct?

21 MS. FRANCIS: Same objection.

22 A. Not strictly based on conversations with  
23 counsel. Much of the changes were based on  
24 clarifications, looking for the actual dates. It was  
25 a large binder.

I **BARBARA MINER** Clerk of the Superior Court of the State of Washington  
for King County do hereby certify that this copy is a true and perfect transcript  
of said original as it appears on file and of record in my office and of the whole  
thereof **IN TESTIMONY WHEREOF** I have affixed this seal of said Superior  
Court at my office at Seattle on this date

JUL 14 2020

BARBARA MINER Superior Court Clerk



By **A. GALLARDO**  
Deputy Clerk

EXHIBIT AD